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15 UNITED STATES OF AMERICA,
16 et al.,

Plaintiffs,

17 vs.

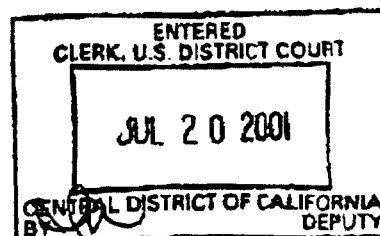
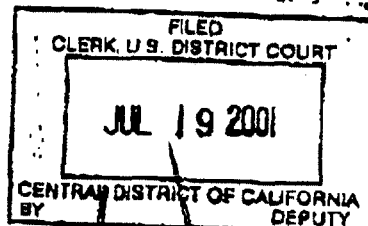
18 J.B. STRINGFELLOW, JR., et al.,
19 Defendants.

20 AND RELATED COUNTERCLAIMS
21 AND THIRD-PARTY CLAIMS

Case No. 83-2501 R

(Proposed)

CONSENT DECREE BETWEEN THE
STATE OF CALIFORNIA AND THE
UNITED STATES RESOLVING
CLAIMS FOR COSTS INCURRED
THROUGH DECEMBER 31, 2000



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**CONSENT DECREE BETWEEN THE STATE OF CALIFORNIA
AND THE UNITED STATES RESOLVING CLAIMS FOR
COSTS INCURRED THROUGH DECEMBER 31, 2000**

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I. BACKGROUND

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2
3 1. This Consent Decree concerns the Stringfellow Acid Pits Superfund Remedial Site (the
4 "Site") located near Glen Avon, California. The Site was a disposal facility for liquid industrial
5 wastes that operated from 1956 to 1972. The wastes received at the Site were "Class 1 wastes,"
6 many of which now are listed as "hazardous substances" pursuant to CERCLA. The Site is a facility
7 as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

8 2. In 1983, the United States and the State of California (the "State") filed suit in the United
9 States District Court for the Central District of California (the "Court") under CERCLA and other
10 federal laws, seeking reimbursement of response costs and injunctive relief from the defendants to
11 remedy the release of hazardous substances from the Site. The State also alleged state law theories
12 of liability seeking similar remedies. The suit alleged that the various defendants alternatively had
13 owned or operated, arranged for the disposal of hazardous substances at, or transported hazardous
14 substances to, the Site. Many of these defendants asserted counterclaims against the United States
15 and the State. The counterclaims against the State were based on allegations that the State was a
16 liable party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and that the State is liable under
17 various theories of State law.

18 3. In 1987, the United States and the State obtained a ruling that many of the first-party
19 defendants were "liable parties" under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). In 1989,
20 the Court found the State also was a "liable party." In 1992, the United States and the State entered
21 into a consent decree (the "1992 Consent Decree") with the Settling Defendants, as defined in
22 Section V of this Consent Decree, through which the Settling Defendants agreed to reimburse the
23 United States for certain "Past Response Costs," and certain future response costs, and interest
24 accrued thereon, as provided by Paragraphs 41 through 50 of the 1992 Consent Decree. The 1992
25 Consent Decree conditioned the reimbursement of the Past Response Costs on the final resolution
26 of the State's liability as alleged in the counterclaims of the Settling Defendants. Subsequently in
27 1995, the Court determined that, under the state law theories brought forward in the counterclaims,

1 the State was liable for 100% of the costs associated with the Site and, pursuant to CERCLA, 65%
2 of the costs. All of these determinations are more fully set out in the District Court's Order
3 Directing Entry of Judgment Pursuant to Rule 54(b), entered September 11, 1998, and the Judgment
4 Pursuant to Rule 54(b), entered September 17, 1998 (the "Rule 54(b) Judgment"). The State has
5 appealed the Rule 54(b) Judgment.

6 **II. JURISDICTION**

7 4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§
8 1331 and 1345 and 28 U.S.C. §§ 9607 and 9613(b), and also has personal jurisdiction over the State.
9 The State consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction
10 to enter into and enforce this Consent Decree.

11 **III. PARTIES BOUND**

12 5. This Consent Decree is binding upon the United States and the State.

13 **IV. STATEMENT OF PURPOSE**

14 6. By entering into this Consent Decree, the mutual objective of the Settling Parties is to (i)
15 effectuate the Rule 54(b) Judgment and other rulings of the Court consistent with portions of an
16 agreement among the State and certain first-party defendants ("Participating Defendants") in the
17 "Stringfellow Site Agreement," while preserving the rights of the State and the Participating
18 Defendants, as set forth herein to appeal the Rule 54(b) Judgment, and (ii) avoid difficult and
19 prolonged litigation by resolving potential liabilities for certain Response Costs incurred by the
20 United States, with accrued interest, through December 31, 2000, as well as any payment by the
21 United States of its own future costs as set forth in Paragraphs 11 and 12 of this Agreement, and (iii)
22 protect the public health and welfare and the environment at the Site by continuing previously
23 initiated response activities. The Settling Parties anticipate that this Consent Decree is not a release
24 of liability for the State, but will effect a complete satisfaction of potential liability of the State for
25 Response Costs, with accrued interest, that the United States incurred in connection with the Site
26 through December 31, 2000. Although the State agrees to continue to develop, construct and

1 implement the response action at the Site, the Settling Parties anticipate that a subsequent consent
2 decree will address the details of the ongoing responsibilities for completing, constructing and
3 implementing the final remedy for the Site, as well as for any costs incurred or to be incurred by the
4 United States after December 31, 2000.

5 **V. DEFINITIONS**

6 7. Unless otherwise expressly provided herein, terms used in this Consent Decree that are
7 defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned
8 to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent
9 Decree, the following definitions shall apply:

- 10 a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and
11 Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.
- 12 b. "Consent Decree" shall mean this consent decree. In the event of conflict between this
13 Consent Decree and any prior settlement or agreement, this Consent Decree shall control.
- 14 c. "Day" shall mean a calendar day. In computing any period of time under this Consent
15 Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period
16 shall run until the close of business of the next working day.
- 17 d. "EPA" shall mean the United States Environmental Protection Agency and any successor
18 departments, agencies, or instrumentalities of the United States.
- 19 e. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral
20 and any subpart thereof.
- 21 f. "Response Costs" shall mean any costs that the United States has incurred or may incur
22 in relation to its response actions at the Site, which are recoverable pursuant to Section 107
23 of CERCLA, 42 U.S.C. § 9607, and include, but are not limited to: direct and indirect costs
24 incurred in reviewing or developing work plans, reports or other documents; verifying the
25 performance of investigative, planning or remedial work; payroll, contractor, travel and
26 laboratory costs; costs otherwise incurred implementing, overseeing or enforcing any

1 person's remedial obligations; and accrued Superfund Interest on any such amounts.

2 g. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

3 h. "Settling Defendants" shall mean those private parties that settled a portion of their
4 liability for the Site through the 1992 Consent Decree, entered October 23, 1992, including
5 Alumax, Inc., the Deutsch Company, General Electric Company, McDonnell Douglas
6 Corporation, Montrose Chemical Corporation, NI Industries, Northrop Corporation, Quantum
7 Chemical Corporation, Quemetco Inc., Rheem Manufacturing Company, Rockwell
8 International Corporation, Rohr Inc., Rhone-Poulenc Basic Chemicals Company,
9 Stringfellow Quarry Company Inc., and Weyerhaeuser Company.

10 i. "Settling Parties" shall mean the United States and the State.

11 j. "Site" shall mean the Stringfellow Acid Pits Superfund Remedial Site, located near
12 Glen Avon, in Riverside County, California. The Site is more specifically described in the
13 1992 Consent Decree, entered October 23, 1992, among the United States, the State, and the
14 Settling Defendants.

15 k. "State" shall mean the State of California, including its departments, agencies, and
16 instrumentalities.

17 l. "Superfund Interest" shall mean interest at the rate specified for interest on investments
18 of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on
19 October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

20 m. "United States" shall mean the United States of America, including its departments,
21 agencies, and instrumentalities.

22 **VI. REIMBURSEMENT OF RESPONSE COSTS**

23 8. Within 30 days following the passage of the California Budget Act for Fiscal Year 2001-
24 2002, anticipated to occur on or about June 30, 2001, the State shall pay to the EPA Hazardous
25 Substance Superfund \$99,440,000.00 for Response Costs, which amount includes Superfund
26 Interest, that the United States incurred at the Site through December 31, 2000. In the event that

1 this Consent Decree has not been entered by the Court prior to the date for payment stated in this
2 Paragraph, the State shall deposit the payment in an interest-bearing account pending the Court's
3 approval of this Consent Decree. Thereafter the State shall make the payment of the principal
4 amount plus all accrued interest within 10 days after the Court's entry of this Consent Decree. EPA
5 shall deposit the above payment into the Stringfellow Oversight Special Account. Amounts paid by
6 the State under this Consent Decree and deposited into the Stringfellow Oversight Special Account
7 shall be retained and used to conduct or finance response actions at or in connections with the Site,
8 or transferred by EPA to the EPA Hazardous Substance Superfund.

9 9. Payment shall be made to EPA by certified check, and shall be accompanied by a
10 statement referencing the Site, this Consent Decree, CERCLA ID# CAT 080012826 and the
11 U.S.A.O. file number 82-22418. At the time of payment, the State shall send notice that such
12 payment has been made to the EPA contact designated in Section XII (Notices and Submissions).
13 The State shall use Express Mail Service through the United States Postal Service for making all
14 payments required by this Consent Decree, and shall direct all payments to:

15 Mellon Bank, EPA Region 9
16 Attn: Superfund Accounting
17 P.O. Box 360863M
Pittsburgh, PA 15251

18 10. The State's payments provided for in Paragraph 8 will satisfy and extinguish all liability
19 and obligations of the Settling Defendants for reimbursement of the United States "Past Response
20 Costs" stated in Paragraphs 41 through 50 of the 1992 Consent Decree. In addition, this payment
21 shall satisfy any further obligation of the Settling Defendants to reimburse the United States for any
22 additional Response Costs incurred through December 31, 2000. Provided, however, that nothing
23 in this Consent Decree will result in any refund to the Settling Defendants of payments already
24 made, nor will entry of this Consent Decree affect the United States' rights to monies paid into
25 escrow for disputed costs pursuant to the 1992 Consent Decree.

26 11. As a result of other prior settlements through consent decrees and administrative orders
27 on consent with private responsible parties, and an inter-agency agreement with the United States

1 Air Force, the United States has placed in one or more Site-related or special accounts, monies that
2 may be used only for Response Costs in connection with the Site. The reimbursement of Response
3 Costs provided for in this Consent Decree shall not satisfy, preclude, limit, or otherwise affect the
4 authority of the United States to use such monies for Site-related activities or to reimburse itself from
5 these monies for Site-related costs. The sources of these monies are more particularly described as
6 follows:

7 a. The monies deposited into escrow by the Settling Defendants pursuant to the dispute
8 resolution procedures of the 1992 Consent Decree in connection with a dispute regarding the
9 recoverability of certain costs of oversight;

10 b. Monies from the following settlements or agreements: inter-agency agreement between
11 the EPA and the United States Air Force; the credit toward future Response Costs pursuant
12 to the 1992 Consent Decree and as set forth in the June 2000 Stipulation between the United
13 States and the Settling Defendants; the General Steel and Wire Consent Decree (dated March
14 8, 1994); the monies received pursuant to the De Minimis Consent Decree (dated April 25,
15 1997); the Rainbow Canyon Consent Decree (lodged November 2000); and the monies paid
16 or retained pursuant to the Administrative Order on Consent, including all amendments,
17 between the United States and certain Settling Defendants.

18 EPA agrees that, pursuant to this Consent Decree, EPA's authority for reimbursement or payment
19 from these accounts is subject to the following restrictions:

20 a. Such use or reimbursement does not violate the applicable terms of the respective
21 settlement; and

22 b. The United States does not use such monies or reimburse itself for Response Costs
23 already satisfied by this Consent Decree or another settlement, and thereby obtain a double
24 recovery of incurred Response Costs to the United States.

25 12. Pursuant to the "De Minimis Consent Decree," entered by the Court on April 25, 1997,
26 the United States received monies that were to be used to pay for operation of a pre-treatment plant

at the Stringfellow Site (the "De Minimis Monies"). The State acknowledges that the United States incurred costs for the operation of this pre-treatment plant from approximately January 1, 1996 through June 15, 1996. The Parties agree that \$2,155,400 from the De Minimis Monies, plus a proportionate share of the interest accrued thereon, will be used to reimburse the United States for operation of the pre-treatment plant. The parties further agree that \$1,000,000 from the De Minimis Monies will be retained by the United States to cover costs to be incurred in connection with oversight of pretreatment plant-related actions after December 31, 2000. The Parties agree that the remainder of such monies shall be forwarded to the State within 60 days of the Court's entry of this Consent Decree for reimbursement of costs incurred or to be incurred in the State's operation of the pre-treatment plant consistent with terms of the De Minimis Consent Decree. Payment shall be made by check, sent by certified mail to:

Ms. Karen Poon
Department of Toxic Substances Control
Accounting
1001 I Street
Sacramento, CA 95814

13. The Parties agree that this Consent Decree shall not affect or otherwise preclude any claims of the United States or the State stemming from federal assistance grants from the United States for the remedial investigation, feasibility study, remedial actions, operation and maintenance, planning or construction at the Site, including issues related to indirect cost rates, audits or advance match claims. All administrative actions related to such claims stemming from federal assistance grants shall continue unaffected, including any audits by the State or the United States, and any pending administrative appeals. Notwithstanding any provision of this Consent Decree, the United States and the State reserve all rights with respect to the amount of any award, refund, payment, or credit resulting from any claim addressed by this Paragraph, including the right to seek from any person or entity reimbursement for such award, refund, payment, or credit.

VII. ON-GOING REMEDIAL OBLIGATIONS AND RESPONSE COSTS

14. The State agrees to perform all future response actions that have been or will be selected for the Stringfellow Site. The State agrees to pay for the United States' future Response Costs. The Settling Parties intend to negotiate in good faith and embody these commitments in a subsequent consent decree to be lodged in federal district court which will include the details of such ongoing obligations. Nothing in the foregoing shall be construed as a waiver by the State of the right to bargain for specific uses of the accounts referenced in Paragraph 11.

VIII. FAILURE TO COMPLY WITH CONSENT DECREE

15. In the event that the California Budget Act for Fiscal Year 2001-2002 provides funds to satisfy the obligations stated in this Consent Decree, but the State fails to make the required payment by the date specified in Paragraph 8 of this Consent Decree, the State shall remain liable for such obligation and an additional penalty amount of 1.5 times the Superfund Interest accruing on such amount unpaid as of the payment due date set forth in Section VI (Reimbursement of Response Costs).

16. Payment of the amount specified in Paragraph 8 above is contingent upon an appropriation of such amount by the California Legislature and the signing into law of such appropriation by the Governor of the State of California. In the event that the California Budget Act for Fiscal Year 2001-2002 does not provide funds to satisfy the obligations stated in this Consent Decree, or if the California Budget Act for Fiscal Year 2001-2002 is not enacted on or before August 30, 2001, this Consent Decree shall be voidable at the sole discretion of EPA.

IX. COVENANT NOT TO SUE BY EPA

17. Except as specifically provided in Paragraphs 13 and 18 of this Consent Decree, and in consideration of the payment that will be made by the State pursuant to Paragraph 8, the United States covenants not to sue or to take administrative action against the State pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the matters addressed in this Consent Decree. "Matters Addressed" are all Response Costs, with accrued interest, that the United States

b. any claim arising out of response actions at the Site through December 31, 2000, including claims based on EPA's selection of response actions, its oversight of response actions, or its approval of plans for such responses;

c. any claim relating to the Equal Access to Justice Act arising out of response actions at the Site through "takings" or similar claims arising out of response actions at the Site through December 31, 2000.

20. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

21. Except as provided in Section IX (Covenant Not to Sue by EPA), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 17 of this Agreement, EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

22. The Settling Parties agree, and by entering this Consent Decree this Court finds, that the State is entitled, as of the date the State completes all payments due pursuant to Paragraph 8 of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §§ 9613(f)(2), for "matters addressed" in this Consent Decree, as defined in Section IX.

23. Nothing in this Consent Decree shall limit, prohibit or otherwise preclude the State from asserting claims or causes of action against any person that is not a party to this Consent Decree for contribution, indemnification or injunctive relief regarding the response action at the Site. Furthermore, nothing in this Consent Decree, including without limitation the State's agreement to reimburse the United States' Past Response Costs and future response costs, as set forth in

Paragraphs 8 and 14, shall operate or be interpreted to waive or otherwise affect any claim or defense asserted by the State regarding its sovereign immunity, rights and privileges, as recognized in the Eleventh Amendment of the United States Constitution.

24. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, the State shall not assert, and may not maintain, any defense or claim based on the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based on any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue set forth in Section IX.

XII. NOTICES AND SUBMISSIONS

25. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to EPA and the State.

As to EPA:

Robert Fitzgerald
Remedial Project Manager
Environmental Protection Agency
Region IX
75 Hawthorne Street (SFD-7-4)
San Francisco, CA 94105-3901

As to the State:

Donald Robinson
California Department of Justice
Environment Section
300 South Spring street, Suite 11 North
Los Angeles, CA 90013

1 **XIII. INTEGRATION**

2 26. This Consent Decree constitutes the final, complete and exclusive agreement and
3 understanding among the Parties with respect to the settlement embodied in this Consent Decree.
4 The Parties acknowledge that there are no representations, agreements, or understandings relating
5 to the settlement other than those expressly contained in this Consent Decree.

6 **XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

7 27. This Consent Decree shall be lodged with the Court for a period of not less than 30 days
8 for public notice and comment. The United States reserves the right to withdraw or withhold its
9 consent if the comments regarding the Consent Decree disclose facts or considerations that indicate
10 that this Consent Decree is inappropriate, improper, or inadequate. The State consents to the entry
11 of this Consent Decree without further notice.

12 28. If for any reason the Court should decline to approve this Consent Decree in the form
13 presented, this Consent Decree is voidable at the sole discretion of either Settling Party, and the
14 terms of the Consent Decree may not be used as evidence in any litigation between the Settling
15 Parties.

16 **XV. EFFECTIVE DATE**

17 29. The Effective Date of this Consent Decree shall be the date on which the Court enters
18 it after notice from EPA that the public comments received, if any, do not require modification of
19 or withdrawal by the United States from this Consent Decree.

20 **XVI. SIGNATORIES/SERVICE**

21 30. Each undersigned representative of the State to this Consent Decree and the Assistant
22 Attorney General for the Environment and Natural Resources Division of the Department of Justice
23 certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and
24 to execute and bind legally such Settling Party to this document.

25 31. The State hereby agrees not to oppose entry of this Consent Decree by the Court or to
26 challenge any provision of this Consent Decree, unless the United States has notified the State in
27

1 writing that it no longer supports entry of the Consent Decree.

2 32. The State shall identify on the attached signature page the name and address of an agent
3 who is authorized to accept service of process by mail on behalf of the State with respect to all
4 matters arising under or relating to this Consent Decree. The State hereby agrees to accept service
5 in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules
6 of Civil Procedure and any applicable local rules of the Court, including, but not limited to, service
7 of a summons.

8 SO ORDERED THIS 19th DAY OF July, 2001

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11 MANUEL L. REAL
United States District Court Judge
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1 IT IS SO AGREED that the undersigned parties enter into this Consent Decree in the matter of
2 United States v. J.B. Stringfellow, relating to the Stringfellow Acid Pits:

3 FOR THE UNITED STATES OF AMERICA
4 DEPARTMENT OF JUSTICE

5 By: 

Date: 4-26-01

6 JOHN C. CRUDEN
7 Acting Assistant Attorney General
8 Environment and Natural Resources Division
9 U.S. Department of Justice
10 Washington, D.C. 20530
11 (202) 514-2701

12 By: 

Date: 4-27-01

13 PHILLIP BROOKS
14 Senior Counsel
15 Environmental Enforcement Section
16 U.S. Department of Justice
17 Washington, D.C. 20530
18 (202) 514-3637

19 (Signatures continue on following pages.)
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1 IT IS SO AGREED that the undersigned parties enter into this Consent Decree in the matter of
2 United States v. J.B. Stringfellow, relating to the Stringfellow Acid Pits:

3 FOR THE UNITED STATES OF AMERICA
4 ENVIRONMENTAL PROTECTION AGENCY

5 By: Keith Takata

KEITH TAKATA

6 Director, Superfund Division
7 Region IX

8 United States Environmental Protection Agency
9 75 Hawthorne Street
10 San Francisco, CA 94105-3901

Date: April 26, 2001

11 By: J. Andrew Helmlinger

J. ANDREW HELMLINGER

12 Assistant Regional Counsel
13 Region IX

14 United States Environmental Protection Agency
15 75 Hawthorne Street
16 San Francisco, CA 94105-3901

Date: Apr. 26 2001

17 (Signatures continue on following page.)
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28 Consent Decree Resolving Claims for Costs - 15

1 IT IS SO AGREED that the undersigned parties enter into this Consent Decree in the matter of
2 United States v. J.B. Stringfellow, relating to the Stringfellow Acid Pits:

3 FOR THE STATE OF CALIFORNIA

4 By: Donald Robinson
5 DONALD ROBINSON
6 California Department of Justice
7 Environment Section
8 300 South Spring street, Suite 11 North
9 Los Angeles, CA 90013
10 (213) 897-2611

Date: 4-30-01